

PROPOSAL REQUEST FORM - EXHIBIT 1

Description of Services	Rate(s)
<p>All submissions must include an initial fee proposal or methodology. Fee should be proposed as a percentage of Effective Gross Income (EGI), and cannot exceed 6% of EGI. Any additional fees and/or anticipated costs that are expected to be expensed to the owner need to be identified in the proposal and clearly explained and justified.</p> <p>Please attach additional sheets as necessary</p>	

Company Name _____

Federal I.D. # _____ Phone #: _____ Date: _____

Authorized Signature: _____

Title: _____

Email Address: _____

REQUEST FOR PROPOSALS (RFP) No. RFP22-R009
Property Management Services
FORM OF PROPOSAL

(RFP Exhibit 2 - Insert in Tab H)

(This Form must be fully completed and placed under Tab H)

(1) Instructions. Unless otherwise specifically required, the items listed below must be completed and included in the bid submittal. Please complete this form by marking an "X," where provided, to verify that the referenced completed form or information has been included within the proposal. Also, complete the following Statement's herein:

"X" = Item Included	Tab No.	Bid Submittal Item (one original signature copy of each document)
	A	Letter of Transmittal with Authorization
	B	Organization
	C	Staff Qualifications and Experience
	D	Supporting Materials
	D	Detailed Estimate of Certain Annual Operating Expenses
	E	Scope of Services
	F	Cost ProposalReferences
	G	References
	H	Proposal Request Form (Exhibit 1)
	H	Form of Proposal (Exhibit 2)
	H	Profile of Firm (Exhibit 3)
	H	Form HUD-5369-C

(2) Debarred Statement. Has this firm, or any principal(s) ever been debarred from providing any services by the Federal Government, any state government, the State of Ohio, or any local government agency within or without the State of Ohio? Yes No If "Yes," please attach a full detailed explanation, including dates, circumstances, and current status.

(3) Disclosure Statement. Does this firm or any principals thereof have any current, past personal or professional relationship with any Commissioner or Officer of the Agency? Yes No If "Yes," please attach a full detailed explanation, including dates, circumstances, and current status.

Signature **Date** **Printed Name** **Company**

LUCAS METROPOLITAN HOUSING (LMH)

REQUEST FOR PROPOSALS (RFP) No. RFP22-R009
Property Management Services
FORM OF PROPOSAL

(RFP Exhibit 2 - Insert in Tab H)

(This Form must be fully completed and placed under Tab H)

(4) Felony Disclosure. Has any principal(s) or any person(s) proposed to perform the work ever been convicted of a felony? Yes No If "Yes," please attach a full detailed explanation, including dates, circumstances, and current status. PLEASE NOTE: The Agency reserves the right to not make award to any bidder that has staff who has been convicted of a felony if the Agency feels that doing such is in its best interests.

(5) Non-Collusive Affidavit. The undersigned party submitting this bid hereby certifies that such bid is genuine and not collusive and that said bidder entity has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or of any other bidder, to fix overhead, profit or cost element of said bid price, or that of any other bidder or to secure any advantage against the Agency or any person interested in the proposed contract; and that all statements in said bid are true.

(6) Bidder's Statement. The undersigned bidder hereby states that by completing and submitting this Form and all other documents within this bid submittal, he/she is verifying that all information provided herein is, to the best of his/her knowledge, true and accurate, and that if the Agency discovers that any information entered herein to be false, such shall entitle the Agency to not consider or make award or to cancel any award with the undersigned party. Further, by completing and submitting the bid submittal, the undersigned bidder is thereby agreeing to abide by all terms and conditions pertaining to this IFB as issued by the Agency, either in hard copy or on the eProcurement Marketplace, including an agreement to execute the attached Sample Contract form. Pursuant to all IFB Documents, this Form of Bid, the Bid Form, and all attachments, and pursuant to all completed Documents submitted, including these forms and all attachments, the undersigned proposes to supply the Agency with the services described herein, and through his proposal.

Signature

Date

Printed Name

Company

LUCAS METROPOLITAN HOUSING (LMH)

**REQUEST FOR PROPOSALS (RFP22-R009)
Property Management Services
PROFILE OF FIRM FORM**

(RFP Exhibit 3 - Insert in Tab H)

(This Form must be fully completed and included with your proposal)

(1) Prime Sub-contractor (This form must be completed by and for each).

(2) Name of Firm:

Telephone:

Fax:

Email:

(3) Street Address, City, State, Zip:

(4) Please attach a brief biography/resume of the company, including the following information: (a) Year Firm Established; (b) Year Firm Established in Ohio; (c) Former Name and Year Established (if applicable); (d) Name of Parent Company and Date Acquired (if applicable).

(5) Identify Principals/Partners in Firm

Name	Title	% of Ownership

(6) Identify the individual(s) that will act as project manager and any other supervisory personnel that will work on project.

Name	Title

Signature Date Printed Name Company

**REQUEST FOR PROPOSALS (RFP22-R009)
Property Management Services
PROFILE OF FIRM FORM**

(RFP Exhibit 3 - Insert in Tab H)

(This Form must be fully completed and included with your proposal)

(7) Bidder Diversity Statement. You must mark all the following that apply to the ownership of this firm and enter where provided enter the correct percentage (%) of ownership of each:

- | | | | |
|---|---|---|---|
| <input type="checkbox"/> Caucasian
American (Male)
_____% | <input type="checkbox"/> Public-Held
Corporation
_____% | <input type="checkbox"/> Government
Agency
_____% | <input type="checkbox"/> Non-Profit
Organization
_____% |
|---|---|---|---|

Resident- (RBE), Minority- (MBE), or Woman-Owned (WBE) Business Enterprise (Qualifies by virtue of 51% or more ownership and active management by one or more of the following):

- | | | | | | | |
|---|---|--|---|--|---|---|
| <input type="checkbox"/> Resident-
Owned*
_____% | <input type="checkbox"/> African
American
_____% | <input type="checkbox"/> Native
American
_____% | <input type="checkbox"/> Hispanic
American
_____% | <input type="checkbox"/> Asian/Pacific
American
_____% | <input type="checkbox"/> Hasidic
Jew
_____% | <input type="checkbox"/> Asian/Indian
American
_____% |
| <input type="checkbox"/> Woman-Owned
(MBE)
_____% | <input type="checkbox"/> Woman-Owned
(Caucasian)
_____% | <input type="checkbox"/> Disabled
Veteran
_____% | <input type="checkbox"/> Other (Specify):
_____% | | | |

WMBE Certification Number:

Certified by (What Agency):

(NOTE: A CERTIFICATION/NUMBER IS NOT REQUIRED TO PROPOSE - ENTER IF AVAILABLE)

(8) Federal Tax ID No.:

(9) Local Business License No. (if applicable):

(10) State of Ohio License Type and No. (if applicable):

(11) Federal License Type and No. (if applicable):

(12) Worker's Compensation Insurance Carrier:

Policy No.:

Expiration Date:

(13) General Liability Insurance Carrier:

Policy No.

Expiration Date:

(14) Automobile Liability Insurance Carrier:

Policy No.

Expiration Date:

Signature

Date

Printed Name

Company

LUCAS METROPOLITAN HOUSING AUTHORITY

Certifications and Representations of Offerors

Non-Construction Contract

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offerors to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Contingent Fee Representation and Agreement

(a) The bidder/offeror represents and certifies as part of its bid/offer that, except for full-time bona fide employees working solely for the bidder/offeror, the bidder/offeror:

- (1) has, has not employed or retained any person or company to solicit or obtain this contract; and
- (2) has, has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) If the answer to either (a)(1) or (a) (2) above is affirmative, the bidder/offeror shall make an immediate and full written disclosure to the PHA Contracting Officer.

(c) Any misrepresentation by the bidder/offeror shall give the PHA the right to (1) terminate the resultant contract; (2) at its discretion, to deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

2. Small, Minority, Women-Owned Business Concern Representation

The bidder/offeror represents and certifies as part of its bid/offer that it:

- (a) is, is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (b) is, is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.
- (c) is, is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- | | |
|---|---|
| <input type="checkbox"/> Black Americans | <input type="checkbox"/> Asian Pacific Americans |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans |
| <input type="checkbox"/> Native Americans | <input type="checkbox"/> Hasidic Jewish Americans |

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

- (1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

(b) Each signature on the bid/offer is considered to be a certification by the signatory that the signatory:

- (1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);
(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

4. Organizational Conflicts of Interest Certification

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:

(i) Award of the contract may result in an unfair competitive advantage;

(ii) The Contractor's objectivity in performing the contract work may be impaired; or

(iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.

(d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

5. Authorized Negotiators (RFPs only)

The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

6. Conflict of Interest

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

7. Offeror's Signature

The offeror hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

Signature & Date:

Typed or Printed Name:

Title:

Instructions to Offerors

Non-Construction

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing



- 03291 -

1. Preparation of Offers

(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

2. Submission of Offers

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

3. Amendments to Solicitations

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by

- (1) signing and returning the amendment;
- (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
- (3) letter or telegram, or
- (4) facsimile, if facsimile offers are authorized in the solicitation. The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

4. Explanation to Prospective Offerors

Any prospective offeror desiring an explanation or interpretation of the solicitation, statement of work, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

5. Responsibility of Prospective Contractor

(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must -

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;

- (2) Have a satisfactory performance record;
- (3) Have a satisfactory record of integrity and business ethics;
- (4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
- (5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD.

(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

6. Late Submissions, Modifications, and Withdrawal of Offers

(a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

- (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
- (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the HA/ HUD that the late receipt was due solely to mishandling by the HA/ HUD after receipt at the HA;
- (3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
- (4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the HA's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.

(h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

7. Contract Award

(a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The HA may

- (1) reject any or all offers if such action is in the HA's interest,
- (2) accept other than the lowest offer,
- (3) waive informalities and minor irregularities in offers received, and (4) award more than one contract for all or part of the requirements stated.

(c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.

(e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

8. Service of Protest

Any protest against the award of a contract pursuant to this solicitation shall be served on the HA by obtaining written and dated acknowledgment of receipt from the HA at the address shown on the cover of this solicitation. The determination of the HA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protestor.

9. Offer Submission

Offers shall be submitted as follows and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show **the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope.**

It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

[Describe bid or proposal preparation instructions here:]

General Conditions for Non-Construction Contracts

Section I — (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (excl. 11/30/2023)

Public Reporting Burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Applicability. This form HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$250,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 905.100) **greater than \$2,000 but not more than \$250,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$250,000 — use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$250,000

1. Definitions

The following definitions are applicable to this contract:

- (a) "Authority or Housing Authority (HA)" means the Housing Authority.
- (b) "Contract" means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) "Day" means calendar days, unless otherwise stated.
- (e) "HUD" means the Secretary of Housing and Urban development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

proposal submitted before final payment of the contract.

- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

-
- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
 - (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
 - (i) appeals under the clause titled Disputes;
 - (ii) litigation or settlement of claims arising from the performance of this contract; or,
 - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

6. Energy Efficiency

The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section 111, Labor Standards Provisions, including any claims for damages for the alleged breach there of which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

9. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the HA under the contract may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HA.

10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

11. Organizational Conflicts of Interest

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
 - (i) Award of the contract may result in an unfair competitive advantage; or
 - () The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

- (a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

14. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;
- (iv) The entering into of any cooperative agreement; and,
- (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
- (ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- (iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(v) The prohibition does not apply as follows:

- (1) Agency and legislative liaison by Own Employees.
- (a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.
- (b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
- (c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:
- (1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,
 - (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- (d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:
- (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
- (e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.
- (2) Professional and technical services.
- (a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-
- (i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
 - (i) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.
- (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.
- (iii) Selling activities by independent sales representatives.
- (c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:
- (i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and
 - (ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
- (d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.
- (e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
- (f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

16. Equal Employment Opportunity

During the performance of this contract, the

Contractor/Seller agrees as follows:

(a) The [contractor/seller] will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The

[contractor/seller] will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(b) The [contractor/seller] will, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.

(c) The [contractor/seller] will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the [contractor/seller]'s legal duty to furnish information.

(d) The [contractor/seller] will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the [contractor/seller]'s commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The [contractor/seller] will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The [contractor/seller] will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The [contractor/seller] will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub[contractor/seller] or vendor. The [contractor/seller] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the [contractor/seller] becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the [contractor/seller] may request the United States to enter into such litigation to protect the interests of the United States.

17. Equal Opportunity for Workers with Disabilities

1. The [contractor/seller] will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The [contractor/seller] agrees to take affirmative action to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination on the basis of their physical or mental disability in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures;
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- iii. Rates of pay or any other form of compensation and changes in compensation;
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- v. Leaves of absence, sick leave, or any other leave;
- vi. Fringe benefits available by virtue of employment, whether or not administered by the [contractor/seller];
- vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- viii. Activities sponsored by the [contractor/seller] including social or recreational programs; and
- ix. Any other term, condition, or privilege of employment.

2. The [contractor/seller] agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

3. In the event of the [contractor/seller] noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

4. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the [contractor/seller]'s obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities.

The [contractor/seller] must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Brail or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). With respect to employees who do not work at a physical location of the [contractor/seller], a [contractor/seller] will satisfy its posting obligations by posting such notices in an electronic format, provided that the [contractor/seller] provides computers, or access to computers, that can access the electronic posting to such employees, or the [contractor/seller] has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the [contractor/seller] to notify job applicants of their rights if the [contractor/seller] utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

5. The [contractor/seller] will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the [contractor/seller] is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.

6. The [contractor/seller] will include the provisions of this clause in every subcontract or purchase order in excess of \$ 10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

7. The [contractor/seller] must, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability.

18. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

19. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

20. Other Contractors

HA may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with HA and HUD employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or HA employee.

21. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

22. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 prioritization requirements, and shall state the minimum percentages of labor hour requirements established in the Benchmark Notice (FR-6085-N-04)..
- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.
- (e) Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts
- (f) Contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of 24 CFR Part 75.

23. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered

materials practicable consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 11/30/2023)

Public Reporting Burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Applicability. This form HUD-5370C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) Non-construction contracts (*without* maintenance) greater than \$250,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 905.200) greater than \$2,000 but not more than \$250,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$250,000 – use Sections I and II.

Section II – Labor Standard Provisions for all Maintenance Contracts greater than \$2,000

1. Minimum Wages

- (a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classifications and wage rates approved by HUD under subparagraph 1(b), shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:
 - (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
 - (2) The classification is utilized in the area by the industry; and
 - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work

in the classification under this Contract from the first day on which work is performed in the classification.

2. Withholding of funds

The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed under this Contract all or part of the wages required under this Contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Public Housing Agency or HUD may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

3. Records

- (a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:
 - (i) Name, address and Social Security Number;
 - (ii) Correct work classification or classifications;
 - (iii) Hourly rate or rates of monetary wages paid;
 - (iv) Rate or rates of any fringe benefits provided;
 - (v) Number of daily and weekly hours worked;
 - (vi) Gross wages earned;
 - (vii) Any deductions made; and
 - (viii) Actual wages paid.
- (b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:
 - (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice; A

- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
- (iii) A training/trainee program that has received prior approval by HUD.

- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
- (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
- (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
- (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

5. Disputes concerning labor standards

- (a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).
 - (i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD). The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

6. Contract Work Hours and Safety Standards Act

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

- (a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to the District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

- (c) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

7. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

8. Non-Federal Prevailing Wage Rates

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

EXHIBIT 7

SAMPLE PROPERTY MANAGEMENT AGREEMENT

PROPERTY MANAGEMENT AGREEMENT

This Property Management Agreement (this “Agreement”) is made effective as of the ___ day of _____, 2011, by and between Collingwood Green Phase I, L.P.; an Ohio limited partnership (“Owner”), and _____, an Ohio public body corporate and politic (“Manager”).

RECITALS

A. Owner leases certain real property pursuant to a ground lease, located in the City of Toledo, Lucas County, Ohio, together with all improvements, appurtenances and equipment located thereon, including 65 low-income senior housing units known as Collingwood Green Phase I, 33 of which units will be operated as public housing pursuant to the Act (as defined below) and subject to all the requirements thereof (the “Project”).

B. Owner wishes to obtain the services of Manager in connection with the management of the Project subject to the terms and provisions of this Agreement; and Manager wishes to perform such services for a fee in exchange for the management fee provided herein.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, the parties hereto mutually agree as follows:

ARTICLE 1 **DEFINITIONS**

1.1 Definitions.

- a) “ACC” means the Consolidated Annual Contributions Contract between the Authority and HUD, as amended from time to time (including, without limitation, as amended by a Mixed Finance Amendment relating to the Project dated on or about the date hereof), but only to the extent such contract, as amended, is applicable to the Public Housing Units or the Project. The ACC is the means by which operating subsidies are provided to the Authority by HUD pursuant to the Act.
- b) “Act” means the United States Housing Act of 1937 (42 U.S.C. §1437 et seq.), as amended from time to time.
- c) “Applicable Public Housing Requirements” means the Act; HUD regulations thereunder (and to the extent applicable, any HUD-approved waivers of regulatory requirements); any other federal laws, regulations, HUD notices, and Executive Orders pertaining to public housing as those requirements may be amended from time to time; the ACC (as amended by the Mixed-Finance Amendment); the HUD approved Declaration of Restrictive Covenants in favor of HUD; (including any documents incorporated into any of them by amendment, exhibit or reference); the Regulatory and Operating Agreement and the A&O Policy (as set forth in the Authority’s PHA Plan approved under 24 CFR Part 903), as such applies to the Public Housing Units. In the event of any conflict among the foregoing authorities, then the Act, the Mixed Finance ACC Amendment and the Declaration of Restrictive Covenants (in that order of primacy, in the event of conflict there among, and including any waivers granted pursuant thereto or pursuant to HUD regulations applicable to privately owned mixed-finance communities such as the Development) shall control.

- d) “A&O Policy” means the Admissions and Continued Occupancy Policy adopted by the Owner with respect to the Project, as amended from time to time with the written approval of the Authority.
- e) “Authority” means the Lucas Metropolitan Housing Authority.
- f) “Code” means the Internal Revenue Code of 1986, as amended.
- g) “HUD” means the United States Department of Housing and Urban Development.
- h) “Investor” shall mean _____, its successors and assigns.
- i) “LIHTC” means (as the context requires) the Low Income Housing Tax Credit program, as described in and governed by the Code, or the tax credits allocated to the Project thereunder.
- j) “Management Plan” means the management plan for each Project, which has been adopted by the Owner for the current fiscal year of the Project, after review and approval by the Authority.
- k) “Non-Public Housing Units” means the 32 LIHTC units in the Project that are not Public Housing Units.
- l) “Non-Public Housing Operating Account” means the bank account to be established in the name of the Owner, into which all rent and other income for the Non-Public Housing Units will be deposited, and out of which all operating expenses for such units (and, to the extent necessary, expenses for the Public Housing Units) will be paid.
- m) “NSP2 Requirements” means all requirements applicable to the NSP2 program as implemented with respect to the Development. Among other requirements, the NSP2 Requirements shall include those requirements made applicable through Title XII of Division A of the American Reinvestment and Recovery Act of 2009 (Public Law 111-005)(the “Recovery Act”), as well as requirements under the “Notice of Funding Availability for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act, 2009,” 74 FR 21377, with corrections issued on June 6, 2009, November 9, 2009 and January 21, 2010 (collectively, the “NOFA”); as well as all requirements made applicable to the Development pursuant to any other federal laws, regulations, notices, guidance and Executive Orders; the NSP2 Requirements shall also include those requirements imposed through the Authority Funds Declaration of Restrictive Covenants recorded as of a substantially even date herewith.
- n) “NSP2 Units” means ___ of the Public Housing Units, which shall be rented to households that qualify as being eligible to occupy NSP2-funded units in accordance with the NSP2 Requirements, as further provided in the Authority Funds Declaration of Restrictive Covenants.
- o) “Operating Budget” means the annual operating budget for the Project (as a whole and distinguished between the different types of units in the Project), as approved by the Owner and the Authority (to the extent required in the R&O Agreement).
- p) “OHFA” means the Ohio Housing Finance Agency.

- q) “PHAS” shall mean the Public Housing Assessment System as set forth in 24 CFR part 902, or its successor.
- r) “Public Housing Units” means the 33 units in the Project that will be operated and maintained as “public housing” units in accordance with all Applicable Public Housing Requirements.
- s) “Public Housing Operating Account” means the bank account to be established in the name of the Owner, into which all rent and other income (including operating subsidy) for the Public Housing Units will be deposited, and out of which all operating expenses for such units will be paid.
- t) “Regulatory Agreement”, or “R&O Agreement” means the Regulatory and Operating Agreement between the Authority and the Owner, pursuant to which the Authority has agreed to provide certain operating subsidies to Owner for the Public Housing Units, and Owner has agreed to operate 33 units in the Project as “public housing” in accordance with all Applicable Public Housing Requirements.
- u) “Tax Credit Units” means the 65 units in the Project (33 of which are Public Housing Units) that will receive the benefit of the Project’s allocation of LIHTCs.

ARTICLE 2
APPOINTMENT AND ACCEPTANCE

2.1 **Appointment and Acceptance.** Owner hereby appoints Manager to manage, operate, maintain and otherwise be responsible for renting the residential units in the Project; and Manager hereby accepts the appointment subject to the terms and conditions set forth in this Agreement.

ARTICLE 3
TERM

3.1 **Term.**

- a) This Agreement shall become effective on the date hereof and shall continue in full force and effect for a period of _____ () years from the date hereof unless terminated in accordance with the provisions of this Article 3. After the initial term and each successive renewal term, this Agreement shall be deemed renewed automatically for a one-year period, on the same terms and conditions as herein stated, unless on or before 60 days prior to the expiration of any such term, either party notifies the other in writing that it elects not to renew the Agreement.
- b) This Agreement may be terminated as follows:
 - (1) By the Owner or the Manager, effective as of the last day of the initial term or, upon sixty (60) days written notice by the terminating party to the other party;
 - (2) If the Authority determines that the Manager has materially violated, breached, or failed to comply with any provision of, or obligation under, the Regulatory Agreement as it pertains to the Public Housing Units (including, without limitation, by reason of its violation, breach or failure to comply with any Applicable Public Housing Requirements and the Nondiscrimination Requirements in the Regulatory Agreement), provided that the

performance of such obligation is under Manager's control and is Manager's responsibility, and subject to notice and a reasonable opportunity to cure, then the Authority may require the Owner to terminate the Manager. Notwithstanding the foregoing, if the Authority determines that the Manager has materially violated, breached or failed to comply with any provision of, or obligation under, the Act or implementing regulations thereof, the Authority may require the Owner to terminate the Manager if the Manager has failed to correct such material violation, breach or failure to comply within ninety (90) days of notice thereof or, if such violation, breach or failure to comply cannot reasonably be cured within such ninety (90)-day period, such longer period as reasonably determined by the Authority. Notwithstanding the foregoing, upon a determination by the Authority of fraud or other criminal activity on the part of the Manager or an employee thereof, the Authority may require the Owner to terminate the Manager immediately.

(3) Immediately upon the occurrence of any of the following events:

- (a) an Event of Bankruptcy with respect to the Manager (as such term is defined in the Owner's Partnership Agreement);
 - (b) the Manager, as a result of gross negligence or willful misconduct, breaches its duties and obligations under this Agreement and the default is not cured within 30 days following written notice thereof;
 - (c) subject to any applicable grace, cure or waiver period (but in any event subject to at least a 30-day cure period), the Manager is cited by HUD, the Authority, the Ohio Housing Finance Agency or any current lender of funds to the Owner for a violation or alleged violation of any applicable rules, regulations, covenant or requirements, or any tax credit related provision;
 - (d) in the event a petition in bankruptcy is filed by or against either the Owner or Manager, or in the event either makes an assignment for the benefit of creditors or takes advantage of any insolvency act, provided that the terminating party gives prompt written notice of such termination.
- c) In the event of any termination of this Agreement, the Manager will cede management of the Project (including, without limitation, the on-site management office, if applicable) to Owner within 48 hours. In addition, within thirty (30) days after such termination, the Manager will (subject to all regulatory restrictions, including but not limited to those set forth in the Regulatory Agreement):
- (1) Turn over to the Owner all of the Project's cash, trust accounts, investments and records;
 - (2) Provide written confirmation to the financial institution(s) holding the Security Deposit Account and each Operating Account that the Manager shall no longer have access to such accounts or the funds therein, and that all such accounts and the funds therein are the sole and exclusive property of Owner. A copy of such confirmation shall be provided contemporaneously to Owner;

- (3) Provide to Owner copies of all leases, contracts, insurance policies, books, files and all other materials and documents in Manager's possession or control relating to the Project to the extent not provided previously;
- (4) Turn over project keys, coded entry devices, passwords, or codes related to the projects or accounts maintained on its behalf;
- (5) Submit to Owner final versions of any and all financial statements required by this Agreement or the Regulatory Agreement;
- (6) Assign to Owner any rights Manager may have (solely in its role as Manager) in and to any existing contracts relating to the operation and maintenance of the Project;
- (7) Settle all unpaid bills for the Project (limited to Owner's funds available to settle said bills); and
- (8) Notify each resident that all future rent payments shall be made directly to Owner.

After Owner and Manager have accounted to each other with respect to all matters outstanding as of the date of termination, the Owner will furnish the Manager security, in form and principal amount satisfactory to the Manager, against any obligations or liabilities the Manager may properly have incurred on behalf of the Owner hereunder.

ARTICLE 4

GOVERNMENTAL REQUIREMENTS

4.1 **Public Housing Requirements.** Pursuant to the Regulatory Agreement, the Owner has agreed to provide for the development and operation of the Public Housing Units in a manner consistent with the ACC and all Applicable Public Housing Requirements. In performing its duties under this Management Agreement, the Manager will, with respect to all Public Housing units, comply with all Applicable Public Housing Requirements. In the event that any instruction from the Owner is in contravention of such requirements, the Applicable Public Housing Requirements will prevail. The Manager agrees to use its best efforts to the extent funding allows to maintain and operate the Project in a manner that, to the extent PHAS scores can be identified by project, the Project would achieve a score of at least a High Performer, as defined by 24 CFR §902.67(a).

This Agreement shall not be or be deemed to be an assignment of any funds advanced or contributed by the Authority or HUD to the Owner or the Manager, and the Owner and the Manager shall not succeed to any the Authority rights under the ACC, or attain any privileges, authorities, interests or rights in or under the ACC. Nothing contained in this Agreement, nor any act of the parties hereto, shall be deemed or construed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any other association or relationship with or involving HUD.

4.2 **Internal Revenue Service:** The Owner has received an allocation of LIHTCs for use in financing the Project. With respect to all Tax Credit Units, of which 33 units also qualify as Public Housing, the Manager will take all steps necessary to assure compliance with the requirements and regulations of both the Internal Revenue Service and OHFA governing the LIHTC program, and comply with the terms of any Tax

Credit Regulatory Agreement applicable to such units. Without limiting the foregoing, Manager will at all times lease, operate, manage and maintain the Project in compliance with all requirements of Section 42 of the Code and the regulations promulgated thereunder, including (without limitation) any and all rent limitations and income qualifications, so that (i) the Project (or each building therein) will at all times qualify as a “qualified low-income housing project” under Section 42(g)(1) of the Code, (ii) each of the buildings will at all times qualify as a “qualified low-income building” under Section 42(c)(2) of the Code, (iii) all Tax Credit Units will at all times qualify as “rent-restricted units” under Section 42(g)(2) of the Code, and will otherwise qualify as “low-income units” under Section 42(i)(3) of the Code, and (iv) all Tax Credit Units will at all times be leased to individuals who qualify to lease or occupy such units under Section 42 of the Code. To the extent Manager is unable to lease, operate, manage and maintain the Project with these requirement, Manager shall promptly notify owner of such fact and the reasons incident thereto.

4.3 **NSP2 Requirements.** The Owner has received an award of NSP2 funds for use in financing the Project. With respect to all NSP2 Units, all of which also qualify as Public Housing and Tax Credit Units, the Manager will take all steps necessary to assure compliance with the NSP2 Requirements.

4.4 **Ohio Law:** The Manager agrees to comply with all applicable laws of the State of Ohio, and all rules and regulations promulgated in connection therewith.

4.5 **Federal Law:** The Manager will comply with all applicable requirements of the following, as the same may be amended from time to time:

- a) The Fair Housing Act, 42 U.S.C. 3601-19, and regulations issued thereunder, 24 CFR Part 100; Executive Order 11063 (Equal Opportunity in Housing) and regulations issued thereunder, 24 CFR Part 107; and the fair housing poster regulations, 24 CFR Part 110.
- b) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and regulations issued thereunder relating to non-discrimination in housing, 24 CFR Part 1.
- c) Age Discrimination Act of 1975, 42 U.S.C. 6101-07, and regulations issued thereunder, 24 CFR Part 146.
- d) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and regulations issued thereunder, 24 CFR Part 8; the Americans with Disabilities Act, 42 U.S.C. 12181-89, and regulations issued thereunder, 28 CFR Part 35.
- e) Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and its implementing regulations at 24 CFR Part 135.
- f) The Drug-Free Workplace Act of 1988 (41 U.S.C. 701) and HUD's implementing regulations at 24 C.F.R. part 24, subpart F.
- g) OMB Circular Numbers A-110 and A-122, as they relate to the acceptance of federal funds and to 24 CFR part 85, to the extent applicable.
- h) Wage Rates under Davis-Bacon Act (40 U.S.C. §276a et seq.) to the extent applicable.

4.6 **Compliance with Government Orders.** Manager will take such action as may be necessary to comply promptly with any and all governmental orders or other requirements affecting the Project, whether

imposed by federal, state, county, or municipal authority, subject, however, to the requirements herein concerning repairs. The Manager shall, however, take no such action so long as the Owner is contesting, or has affirmed its intention to contest, any such order or requirement. The Manager will notify the Owner, in writing, of all notices, of such governmental orders within seventy-two (72) hours of the time of their receipt.

4.7 **Related Documents.** The Owner has adopted a Management Plan incorporated herein by reference, which provides a detailed description of the policies and procedures to be followed in the management of the Project, and an A&O Policy, which describes the criteria and processes for selecting tenants for the Public Housing Units and the requirements for continued occupancy of such units. In many of its provisions, this Agreement briefly defines the nature of the Manager's obligations, with the intention that reference be made to the Management Plan and/or the A&O Policy for more detailed policies and procedures. Accordingly, the Owner and the Manager will comply with all applicable provisions of the Management Plan and the A&O Policy, regardless of whether specific reference is made thereto in any particular provision of this Agreement.

In addition, the Project is subject to certain restrictive covenants and operational requirements as contained in the Regulatory Agreement and other documents listed on Exhibit A attached hereto and incorporated herein (together, the "Project Documents"). The Owner has furnished the Manager with copies of all Project Documents. The Manager agrees to comply, and will cause the Project to comply, with the provisions of the Project Documents.

ARTICLE 5 **SERVICES OF MANAGER**

5.1 **Rentals.** Manager shall offer for rent and shall rent the housing units in the Project in accordance with all Requirements (as defined below), a rent schedule to be provided by Owner and the leasing guidelines and form of lease referred to below. Pursuant to its rental responsibilities, Manager shall perform the following (collectively, the Requirements):

- a) follow the tenant selection policies described in the Management Plan and, with respect only to the Public Housing Units (and, to the extent specified therein, the Non-Public Housing Units), the A&O Policy, which policies include renting to low-income tenants at rents that satisfy eligibility for LIHTC purposes;
- b) show housing units for rent in the Project to all prospective tenants;
- c) take and process applications for rentals, as set forth in the Management Plan and, with respect only to the Public Housing Units (and, to the extent specified therein, Non-Public Housing Units), the A&O Policy. If an application is rejected, the applicant will receive written notice of the reason for rejection and the rejected application, with reason for rejection noted thereon, will be kept on file for three (3) years following the rejection. Any applicant so rejected may have the opportunity to file a grievance with the manager in accordance with the Grievance Procedure detailed in the A&O Policy.
- d) comply with the leasing and other Requirements contained in Section 42 of the Code with respect to housing units eligible for the low-income housing tax credit;
- e) prepare all dwelling leases and, if applicable, parking permits, and will execute the same in its name, identified thereon as agent for the Owner. The terms of all leases for Public Housing Units

will comply with all Applicable Public Housing Requirements and any pertinent provisions of the Regulatory Agreement. The terms of all leases for Tax Credit Units will comply with the pertinent provisions of the other Project Documents, and the requirements of the Code regarding LIHTCs. Dwelling leases for the Public Housing Units will be in a form approved by the Owner, the Authority and HUD, but individual dwelling leases need not be submitted for the approval of any of them;

- f) counsel all prospective tenants of Public Housing Units and Tax Credit Units regarding their eligibility for such units, and prepare and verify eligibility certifications and re-certifications in accordance with the R&O Agreement, the A&O Policy, the ACC, the Act and any HUD regulations pursuant thereto, any other Project Documents, and the requirements of Section 42 of the Code (as applicable);
- g) negotiate and execute any concession agreements in Manager's name, identified thereon as agent for Owner, subject to prior written approval by Owner of all terms and conditions;
- h) collect, deposit, and disburse security deposits, if required, in accordance with the terms of each tenant's lease, Sections 9.1 and 9.2 hereof, the provisions of State Landlord-Tenant law, and (with respect to Public Housing Units) all Applicable Public Housing Requirements. The amount of each security deposit will be specified in the lease and be consistent with all applicable laws. Any security deposits collected will be deposited by the Manager in an interest-bearing account, separate from all other accounts and funds, with a bank or other financial institution whose deposits are insured by an agency of the United States. This account will be carried in the Manager's name and designated of record as Collingwood Green Phase I: Security Deposit Account. Interest on security deposits shall be paid according to the leases and applicable law;
- i) maintain a current list of acceptable prospective tenants and undertake all arrangements necessary and incidental to the acceptance of rental applications and the execution of leases, as according to the requirements of 24 CFR Parts 5 and 960. Manager shall exercise its best efforts (including, but not limited to, placement of advertising with all marketing activities complying with federal state and local requirements, including Section 42 of the I.R.C. and the project's R&O Agreement, interviewing prospective tenants, assisting and counseling in completion of rental applications and execution of leases, determining qualification for preference or priority for admission to the Project, processing documents and credit and employment verifications, and explanation of the program and operations of Owner) to effect the leasing of dwelling units and renewal of leases so that the Project is occupied as fully as possible;
- j) perform such other acts and deeds requested by Owner as are reasonable, necessary and proper in the discharge of Manager's rental duties under this Agreement;
- k) prorate the first month's rent collected from tenant should the lease term commence on any other day than the first day of the month. If the lease term occurs after the twentieth (20th) day of the month, the prorated amount, plus the next month's rent, shall be collected on or before the first day of the lease term;
- l) participate in the inspection of each dwelling unit identified in the lease together with the tenant prior to move-in and upon move-out, and shall record in writing any damage to the unit at the time the tenant moved in and any damage occurring during the tenant's occupancy; and

- m) will establish a resident “Grievance Procedure” that complies with Section 6(k) of the Act and 24 CFR Part 966, subpart B. Such Grievance Procedure is detailed in the A&O Policy. With respect to the Public Housing Units, notify the tenant (in a form to be approved by the Owner) of any proposed adverse action (including, but not limited to, lease termination, transfer to a different unit, imposition of maintenance or other charges, or increases in rent) and the grounds therefore. Following such notice, the Manager will afford any tenant who so requests the opportunity for an informal hearing, in accordance with the Owner’s Tenant Grievance Procedure (which applies only to the Public Housing Units and is attached hereto) unless the adverse action is an eviction based on any violent or drug-related criminal activity (on or off the premises), any criminal activity that threatens the health, safety or right to peaceful enjoyment of their premises by other residents of the Project, neighbors or agents of the Owner, or any activity resulting in a felony conviction, in which case the Grievance Procedure will not apply.
- n) Admission of eligible and suitable applicants to occupancy of the Project will be in accordance with, as applicable, a written system of preferences or priorities, as further detailed in the Management Plan and A&O Policy;

5.2 QUALIFIED RENTAL USE. In addition to the requirements in Section 5.1 above and in order to comply with the requirements of Section 4.2 above with respect to the Tax Credit Units, Manager shall:

- a) require each prospective tenant to certify, on the lease application and the Low Income Housing Tax Credit Certification form, the amount of such tenant's annual family income, family size, and any other information required to enable Owner to obtain the Credits or otherwise reasonably requested by Owner. Manager shall require tenants to certify in writing as to such matters on an annual basis, prior to such time as the information is required for reporting purposes. Manager must verify information provided by tenant including all income, assets, household characteristics and circumstances that affect eligibility. Income verification is required prior to tenant occupancy of a unit.
- b) from time to time furnish Owner with a written schedule of maximum rents for the dwelling units which complies with the Requirements, for Owner's (and any lender's, if required) approval. Without Owner's express prior written consent, Manager shall not enter into any lease on behalf of Owner at a rental amount exceeding the applicable maximum.
- c) maintain and preserve all written records of tenant family income and size, and any other information necessary to comply with the Requirements or otherwise reasonably requested by Owner throughout the term of this Agreement, and shall turn all such records over to Owner upon the termination or expiration of this Agreement.
- d) If requested by Owner, Manager shall prepare reports of low-income leasing and occupancy and other matters related to Manager's obligations hereunder and to the operation of the Project in form suitable for submission in connection with the LIHTC and in compliance with all Applicable Public Housing Requirements.

5.3 Collection of Rents and Other Receipts. The Manager will collect when due all rents, charges and other amounts receivable on the Owner's account in connection with the management and operation of the Project. All such receipts from the Public Housing Units (except for tenants' security deposits, which will be handled as specified in Section 5.1(h) above) will be deposited in an account, separate from all other accounts

and funds, with a bank whose deposits are insured by the Federal Deposit Insurance Corporation (“FDIC”). This account will be carried in the Manager’s name and designated of record as Collingwood Green Phase I: Public Housing Operating Account. Similarly, all receipts from the Non-Public Housing Units (except for tenants’ security deposits) will be deposited in a separate account with a bank whose deposits are insured by the FDIC, which account will be carried in the Manager’s name and designated of record as Collingwood Green Phase I: Non-Public Housing Operating Account. Except for amounts due the Manager pursuant to the provisions hereof, the Manager shall have no property interest in either of the above Operating Accounts. Each Operating Account shall, at all times during the term hereof, be under the control of Owner. Such receipts shall not be commingled with other funds and shall be deposited and held in each Operating Account in accordance with the provisions of Section 9.1 hereof. Manager shall ensure that each resident of a Public Housing and Tax Credit Unit contributes 30% of its adjusted gross income as rent in accordance with 24 CFR part 5 (or as otherwise calculated in accordance with 24 CFR part 5), or flat rents in accordance with 24 CFR part 960.253. In no event shall such rental contributions be modified without the prior written approval of Owner, the Authority, and HUD.

5.4 Enforcement of Leases. Manager shall take all reasonable action to secure full compliance by each tenant with the terms of such tenant’s lease. Voluntary compliance will be emphasized and Manager shall counsel tenants and make referrals to community agencies in cases of financial hardship or under other circumstances deemed appropriate by Manager, to the end that involuntary termination of tenancies may be avoided to the maximum extent consistent with sound management of the Project. Nevertheless, and subject to the pertinent procedures prescribed in the Management Plan (and, with respect only to the Public Housing Units, the A&O Policy), Manager may, and shall if requested by Owner, lawfully terminate any tenancy when, in Manager’s judgment, sufficient cause for such termination occurs under the terms of tenant’s lease, including, but not limited to, nonpayment of rent. With respect to any proposed lease termination or eviction of a tenant of a Public Housing Unit, the Manager will provide all notices of lease termination and take all steps described in the Owner’s Tenant Grievance Procedure (which is applicable only to the Public Housing Units). For this purpose, Manager is authorized to consult with legal counsel to be designated by Owner and bring actions for eviction and execute notices to vacate and judicial pleadings incident to such actions, provided, however, that Manager shall keep Owner informed of such actions and shall follow such instructions as Owner may prescribe for the conduct of any such action. Reasonable attorneys’ fees and other necessary costs incurred in connection with such actions, as determined by Owner, shall be paid out of the applicable Operating Account. Manager shall properly assess, bill to and make every reasonable effort to collect from each tenant, or the security deposit, the cost of repairing any damages to the housing unit arising during the tenant’s occupancy.

5.5 Maintenance and Repairs; Bids and Procurements.

a) **Maintenance and Repairs.** Manager shall, at Owner’s expense, maintain the Project in a decent, safe and sanitary condition and in a rentable state of repair, all in accordance with the Project rules and regulations and all applicable local, state and federal laws ordinances and codes. Manager shall otherwise maintain the Project at all times in a condition acceptable to Owner, including but not limited to cleaning, painting, decorating, plumbing, carpentry, grounds care, and such other maintenance and repair work as may be necessary. Incident thereto, the following provisions shall apply:

- 1) Special attention shall be given to preventive maintenance and, to that end, the services of assigned maintenance staff shall be used.
- 2) Subject to Owner’s prior written approval, Manager shall contract with qualified independent contractors for the maintenance and repair of major mechanical systems,

and for the performance of extraordinary repairs beyond the capability of regular maintenance personnel. Manager shall obtain, prior to commencement of any work, appropriate written evidence of such contractor's liability and workers' compensation insurance. All service contracts will: (a) be in the name of the Owner; (b) be assignable, at the Owner's sole option; and (c) include a provision for cancellation by the Owner, without payment of any fee, upon not more than 30 days notice.

- 3) Manager shall systematically and promptly receive and investigate all service requests from tenants, take such action thereon as may be justified, and shall keep records of the same. Emergency requests shall be serviced on a 24-hour basis. Complaints of a serious nature shall be reported to Owner after investigation. At Owner's request, Owner shall receive all service requests and the reports of action thereon.
- 4) Manager shall take such action as may be necessary to comply with any and all orders and Requirements of federal, state, county and municipal authorities having jurisdiction over the Project, and with orders of any board of fire underwriters, insurance companies and other similar bodies pertaining to the Project.
- 5) Except as otherwise provided in this section, Manager is authorized to purchase, at Owner's expense, all materials, equipment, tools, appliances, supplies and services necessary for proper maintenance and repair of the Project. Manager shall obtain receipts for all contracts, materials, supplies, utilities, and services for those items which can be obtained from more than one source. Manager shall obtain bids on all contracts or purchases which exceed \$10,000. Manager shall secure and credit to Owner all discounts, rebates or commissions obtainable with respect to purchase, service contracts and all other transactions on Owner's behalf. Provided, however, that to the extent applicable, Manager shall follow its own procurement procedures.

Notwithstanding the foregoing, the prior written approval of Owner will be required for any contract which exceeds one year in duration, or expenditure which exceeds \$10,000 in any one instance for labor, materials, or otherwise in connection with the maintenance and repair of the Project, except for emergency repairs involving manifest danger to persons or property, or required to avoid suspension of any necessary service to the Project. In the event of emergency repairs, Manager shall notify Owner of the facts promptly, and in no event later than 72 hours from the occurrence of the event.

- 6) The Manager will systematically and promptly receive and investigate all service requests from residents, take such action thereof as needed, and will keep and distribute records of the same as follows:
 1. Emergency requests will be received and serviced on a twenty-four (24) hour basis. All emergency repairs will be repaired or abated within 24 hours.
 2. Routine repairs will be completed with reasonable promptness. All routine repairs will be evaluated within seven working days, and every effort will be made to complete routine repairs within 21 days, excluding extenuating circumstances.

3. The Manager will track work orders by, at a minimum, the date and time the work order was received, the nature of the repair, and the completion date.

5.6 **Utilities and Services.** Manager shall make arrangements for water, electricity, gas, fuel, oil, sewage and trash disposal, vermin extermination, decoration of common areas, laundry facilities, telephone services and other necessary services in connection with the Project. Subject to Owner's prior approval as required in Section 5.5, Manager shall make such contracts as may be necessary to secure such utilities and services.

5.7. **On-site Management; Personnel.**

- a) **On-Site Management Facilities.** Subject to the further agreement of the Owner and the Manager as to more specific terms, the Manager will maintain a management office within the Project. The cost associated with this item will be treated as a Project expense, a proportionate share of which will be attributable to the Public Housing Units and the Non-Public Housing Units, respectively.
- b) **Personnel.** The Management Plan will prescribe the number and positions of the personnel to be regularly employed in the direct management of the Property. All such personnel will be employees of the Manager and will be hired, paid, supervised, and discharged by the Manager. All employees of the Manager must meet all qualifications, licensing and code requirements applicable to assigned tasks and responsibilities. Within the described staffing program, the Property Manager will have authority and responsibility for organizing and directing the work of all on-site employees. All direct costs associated with "on-site" employees, including Property Manager, rental and leasing staff, maintenance, landscaping, custodial staff and security personnel, as applicable, will be paid by the Owner from Property funds as a property operating expense, including direct salary and fringe benefits, taxes and assessments payable to federal state and local governments in connection with employment of such personnel. Costs attributable to other employees of the Manager who perform "front-line" functions (as defined and illustrated in HUD Handbook 4381.5 REV-2, The Management Agent Handbook, Chapter 6) will also be paid from Property funds as a property operating expense. All planned employees who will be paid from Property funds will be identified in the budget detail. All maintenance laborers and mechanics employed in the operation of the Property shall be paid not less than the wages prevailing in the locality, as determined or adopted by the Secretary of HUD pursuant to Section 12 of the Act, subject to the provisions of subsection (b) thereof.

5.8 **Operating Accounts.**

- a) From the funds collected and deposited by the Manager into each Operating Account pursuant to Section 5.3 above, the Manager will make the following disbursements from each such Operating Account (in a proportionate amount applicable to the Public Housing Units and the Non-Public Housing Units, unless otherwise specified in the R&O Agreement or the Project Documents) promptly when payable:
 - (1) Reimbursement to the Manager for the pro rata share of compensation (including fringe benefits) payable to the employees specified in Section 5.7 above, and for the taxes and assessments payable to local, state, and Federal governments for such personnel, worker's compensation insurance, and any other payroll expenses in connection with the

employment of such personnel. Manager shall be allowed to charge the Project a fee equal to five percent of payroll to cover the cost of processing the payroll.

- (2) The aggregate payments required to be made monthly by the Owner to the Mortgagees, including the amounts due under the Mortgages for principal, amortization, interest, taxes and assessments, fire and other hazards insurance premiums, and the amount specified in the Mortgages or R&O Agreement or other documents for allocation to any reserves.
- (3) All sums otherwise due and payable by the Owner as expenses of the Project and authorized to be incurred by the Manager under the terms of this Agreement, including the costs of all maintenance, repairs and services (pursuant to Sections 5.6 and 5.7 above) and compensation payable to the Manager for its service hereunder (pursuant to Section 11.1 below).
- (4) Rent refunds, payments to tenants of Public Housing Units as utility allowances (as described in the A&O Policy), and payments on behalf of such residents directly to utility providers (to the extent specifically provided by any agreements between the Owner and such providers) with notification and proof of payment to the tenant.

The Manager specifically acknowledges and agrees that disbursements from the Public Housing Operating Account may be made only for "Public Housing Unit Expenses," as defined in the R&O Agreement. Manager further acknowledges and agrees that, as further defined in the R&O Agreement, the definition of "Public Housing Unit Expenses", (i) is subject to adjustment in the amount of the portion, if any, of a line item that is inappropriate to allocate between the Public Housing Units and all other units within the Project on the basis of the "Authority Percentage" (e.g., marketing and advertising costs, if such costs relate solely or preponderantly to the Non-Public Housing Units), and (ii) is presently understood to exclude principal and amortization payments to Mortgagees.

- b) Except for the disbursements mentioned in Section 5.8.a. above, funds will be disbursed or transferred from either Operating Account only as the Owner may from time to time direct in writing. The Manager will invest any Project funds that HUD policies require to be invested, and make reasonable efforts to invest other Project funds in Permitted Investments, as defined in the R&O Agreement, unless the Owner specifically directs the Manager not to invest those other funds.
- c) The Owner shall establish and maintain one or more reserve accounts with reasonable reserve funds to provide for working capital needs of the Project for operations, maintenance, repairs, capital improvements, replacement, contingencies or any other purpose deemed necessary or appropriate by the Owner (each a "Replacement Reserve"). In the event the balance in either Operating Account is at any time insufficient to pay disbursements due and payable under Subsection 5.8.a above, the Manager will inform the Owner of that fact and the Owner will make a withdrawal from the Replacement Reserve for the Operating Reserve (as defined in the Regulatory Agreement) and remit such funds to the Manager in an amount sufficient to cover the deficiency; if the deficiency in either Operating Account is of a temporary nature (i.e., based only on the fact that disbursements are payable before tenant rents and other Project income has been collected), the Manager shall, following deposit into the appropriate Operating Account of tenant rents and other Project income for the applicable month, reimburse the Owner in the amount of any such withdrawals, and Owner shall, in turn,

reimburse the Operating Reserve account. In no event will the Manager be required to use its own funds to pay any Project disbursements or be liable for any losses, costs or damages arising out of owner's failure to cover the deficiency. Notwithstanding anything herein to the contrary, all withdrawals from any reserve account shall be made in accordance with the R&O Agreement.

5.9 **Operating Budget.** Manager shall prepare a recommended annual operating budget and projected rental rates for the Project for each fiscal year during the term of this Agreement, and shall submit the same to Owner, Investor and (to the extent required under the Regulatory Agreement) the Authority at least one hundred twenty (120) days before the beginning of such fiscal year. The annual operating budget shall include a schedule of recommended rents to be charged for each housing unit, including recommended rent increases with respect to lease renewals and new leases. In preparing each proposed annual operating budget, Manager shall use its best efforts to take account of anticipated increases in real estate taxes, utility charges and other operating costs. To the extent feasible, Manager shall support anticipated increases in real estate taxes and utility charges with written evidence or documentation. Proposed annual operating budgets for the Project shall be subject to approval by Owner, Investor and the Authority (to the extent required under the Regulatory Agreement). Owner shall inform Manager of any changes incorporated in the approved operating budget, and Manager shall make no expenditures in excess of the amounts set forth in such approved operating budget for each line item of operation expense itemized, without the prior written approval of Owner, except as permitted pursuant to Section 5.5 thereof for emergency repairs involving manifest danger to persons or property, or required to avoid suspension of any necessary services to the Project.

5.10 **Escrow & Tax Payments.** From the funds collected and deposited by Manager in the Operating Account, Manager shall make any monthly escrow payments required under the mortgage loans or the direction of Owner, if any, for the purpose of funding insurance, tax and such other reserve or escrow accounts for the Project as are necessary to conform to the Requirements. Manager promptly shall present tax bills and insurance premium notices to the escrow agent for payment, and shall furnish Owner with evidence of timely payment of such taxes and insurance premiums, and of timely payment of mortgage and escrow payments, if any.

5.11 **Licenses and Permits.** Manager shall acquire and keep in force, at Owner's expense, all licenses and permits required for the operation of the Project as rental housing.

5.12 **Records and Reports.** In addition to any Requirements (as defined in Section 5.1) specified in this Agreement, Manager shall have the following responsibilities with respect to records and reports:

- a) Manager shall establish and maintain a system of records, books, and accounts using the accrual method of accounting and in a manner satisfactory to Owner and Investor and the Authority which is consistent with and for the duration mandated by the Requirements. All records, books and accounts shall include information relating to the status of the Project (including complete tenant files, both current and historic, and a maintenance file for each dwelling in the Project). All records, books and accounts will be subject to examination at reasonable hours upon reasonable notice by any authorized representative of either the Owner or any of its members or of the Authority.
- b) Manager shall prepare and submit the following reports to Owner on or by the twentieth (20th) day after the end of each calendar month.
 - 1) A monthly asset management report in the form provided by Investor.

- 2) A current month rent roll showing delinquencies, vacancies, rent collections, physical occupancy and qualified tax-credit occupancy.
 - 3) A statement of any accounts, records, reports, documents and other information necessary to receive payments under the Regulatory Agreement and the ACC (all such payments received by the Manager to be deposited in the Public Housing Operating Account).
 - 4) Reconciled bank statements of the Operating Accounts, Security Deposit Accounts and Replacement Reserve Accounts as of the end of the previous month.
 - 5) A narrative of any unusual actions taken or emergencies responded to, and a full report of any accidents, claims, and potential claims, for the proceeding month.
- c) Manager shall prepare and submit the following quarterly reports in the form required by Owner to Owner on or by the twentieth (20th) day after the end of each calendar quarter.
- 1) A quarterly asset management report in the form provided by Owner.
 - 2) A quarterly status report in the form provided by Owner.
 - 3) A balance sheet for the Project.
 - 4) An income statement with actual vs. budget comparison.
 - 5) A check register for the quarter.
 - 6) Copies of cancelled check and any statement for real estate taxes paid during the quarter.
 - 7) Copies of cancelled check and any invoice for insurance premiums paid during the quarter.
 - 8) Upon request of Owner, copies of cancelled check and invoice for any payment of \$1,000 or more (excluding mortgage and utility payments, cash transfers, management fees or reimbursements to management company).
 - 9) Reconciled bank statements for all company accounts.
 - 10) Such other reports as are reasonably requested for such quarter, including, if requested, a trial balance and a general ledger.
- d) Each quarterly report shall include separate reports on the operations of the public housing components of the Project and the non-public housing component of the Project as well as a report on the entire Project. At the end of the third quarter, an estimate of benefits and losses for the year, the projected operating budget for the coming year and the use of MBE and WBE's in the operation of the project shall be included.
- e) No later than sixty (60) days after the end of each fiscal year of the Project, the Manager will prepare and submit to the Owner (for the Owner's signature and submission to the Authority and HUD) a draft of the federal tax information and a complete annual financial report for the Project based upon an examination of the books and records of the Owner including (i) a report containing audited financial statements for the prior fiscal year, including a profit and loss statement, a balance sheet, a statement of member's equity, and a cash flow statement; (ii) an unaudited comparison of the actual results of the operations of the Project during prior fiscal year with operating budget for each year; (iii) a report of the occupancy level of the project; (iv) a statement indicating if there are any operating deficits or anticipated operating deficits; and if so, the manner in which it is anticipated that such deficits will be funded; (v) a narrative explaining significant deviations in the operations of the Project from projected operations and outlining and explaining any material or significant occurrences affecting the Project or the owner; and (vi) any other information regarding the Project and its operations during the prior fiscal year reasonably requested by the Owner.

Each annual report shall include separate reports on the operations of the public housing

component of the Project and the non-public component of the Project, as well as a report on the entire Project. After approval by the Owner, the final completed reports shall be prepared and certified by the Owner's certified public accountant in accordance with the requirements of the Owner, any directives of the Lenders or the Authority and in conformity with generally accepted accounting principles applied on a consistent basis.

- f) Manager shall send all reports that are required to be sent to any lenders to Owner for Owner's prior approval, which approval shall not be unreasonably withheld or delayed provided, however, that Owner shall have two weeks to review such reports prior to submission to any lender.
- g) Manager shall prepare, execute and file all forms, reports and returns required by law in connection with the employment of personnel, unemployment insurance, workers' compensation insurance, disability benefits, Social Security and other similar insurance, and all other benefits or taxes now in effect or hereafter imposed.
- h) All bookkeeping, data processing services and management overhead expenses shall be paid for by Manager, including any additional accounting services necessary to produce reports required under this Section 5.12 to the satisfaction of Owner.
- i) Manager shall promptly furnish such additional information as may be requested from time to time by Owner with respect to the renting and financial, physical or operational condition of the Project, and agrees to assist the Owner, as reasonably necessary, in providing all other information and preparing all other reports as the Owner is required to provide under the Regulatory Agreement.
- j) Manager shall establish tenant files containing copies of leases, certification forms, notices and other documentation required by Owner as necessary to conform to the Requirements. In addition, Manager shall upon request by Owner provide to Owner a copy of all original tenant files as soon as they become available.
- k) Manager will permit the Authority, HUD and any agency providing funds to Authority, to perform any audit of the Manager's finances and records related to its performance under this Agreement, including without limitation, the financial arrangement with any party Manager may delegate to discharge any part of its obligations under this Agreement. Manager shall provide access to Authority, HUD, any agency providing funds to Authority, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records which are directly pertinent to this Agreement for the purpose of audit and examination, including the right to make copies. The Manager shall provide HUD or its duly authorized representative access to the Property.

5.13 **Supporting Documentation.** As additional support to the monthly asset management report and rent roll required pursuant to Section 5.12 b) above, Manager shall provide, upon Owner's request, copies of the following:

- a) Bank deposit slips.
- b) Detailed trial balance.
- c) Summaries of adjusting journal entries.

5.14 **Tenant-Management Relations.** Manager shall encourage and assist tenants of the Project to

participate in a residents' organization to promote the tenants' common interests and to increase their ability and incentive to protect and maintain the Project and to contribute to its efficient management.

5.15 **Owner Communications**. Manager shall be available for communications with Owner and shall keep Owner advised of items materially affecting the Project.

5.16. **[Reserved]**

5.17 **[Reserved]**

ARTICLE 6 **MANAGEMENT AUTHORITY**

6.1 **Authority**. Manager's authority is expressly limited to the provisions contained herein as they may be amended in writing from time to time in accordance with the provisions of this Agreement. Owner expressly withholds from Manager any power or authority to make any structural change in the Project or to make any other major alterations or additions in or to the Project or fixtures or equipment therein, or to incur any expense chargeable to Owner other than expenses related to exercising the express powers granted to Manager by the terms of this Agreement without the prior written consent of Owner.

6.2 **Delegation of Duties**. Manager shall have the right to engage independent contractors for performance of such of its duties hereunder as Manager deems necessary, but Manager shall have the responsibility for supervision of the performance of such duties. All contracts with independent contractors shall be subject to the approval of Owner.

6.3 **Compliance with Law**. Manager shall comply fully with all federal, state, county, municipal and special district laws, ordinances, rules, regulations and orders relative to the leasing, use, operation, repair and maintenance of the Project. Manager shall remedy promptly any violation of any such law, ordinance, rule, regulation or order which comes to its attention and shall notify Owner by the end of the next business day after Manager becomes aware of any violation for which Owner may be subject to penalty.

6.4 **Management Plan**. Particular Requirements for the day-to-day management of the Project are outlined in the Management Plan.

ARTICLE 7 **INSURANCE AND INDEMNIFICATION**

7.1 **Liability of Manager**. Except as expressly provided to the contrary herein, the obligations and duties of Manager under this Agreement shall be performed as agent of Owner. All expenses incurred by Manager in accordance with its obligations and duties under this Agreement and consistent with Owner's approved operating budget, except those due to gross negligence or willful misconduct and those expressly specified as Manager's expenses herein, shall be for the account of and on behalf of Owner.

7.2 **Insurance**. Manager shall obtain and keep in force such forms and amount of insurance requested by Owner at the Owner's expense as necessary under the Requirements (and as otherwise shall be in conformity with the R&O Agreement) with insurance companies satisfactory to Owner, including but not limited to insurance against physical damage (e.g., fire and extended coverage endorsement, boiler and machinery, etc.) and against liability for loss, damage or injury to property or persons which might arise out of the occupancy, management, operation or maintenance of any part of the Project. Manager, while acting as real estate manager for Owner, shall be named as an additional insured in all liability insurance maintained with

respect to the Project. Manager shall investigate and promptly furnish to Owner and the Authority full written reports of all accidents, claims and potential claims for damages relating to the Project, and shall cooperate fully with Owner's insurers, regardless of whether the insurance was arranged by Manager or others. Manager shall provide a copy of such insurance policies to Owner and, to the extent required under the loan documents, to the lenders.

7.3 **Fidelity Bond.** The Manager will furnish, at its own expense, a fidelity bond in a principal sum that is at least equal to the gross potential income of the Project for two months and is conditioned to protect the Owner and AMHA against misappropriation of Project funds by the Manager and its employees. The other terms and conditions of the bond, and the surety thereon, will be subject to the approval of the Owner.

7.4 **Cooperation.** Manager shall furnish whatever readily available information is requested by Owner for the purpose of obtaining insurance coverage, and shall aid and cooperate in every reasonable way with respect to such insurance and any loss thereunder.

7.5 **Manager's Insurance.** At all times during the term of this Agreement, Manager shall maintain insurance in full force and effect, with a responsible insurance company reasonably satisfactory to Owner and to Owner's lenders, and shall furnish Owner with a certificate of insurance evidencing workers' compensation insurance, in such amounts as may be required by law from time to time. Such certificate shall have attached thereto endorsements that Owner shall be given at least thirty days' prior written notice of cancellation of, or any material change in, policy. Owner shall not reimburse Manager for Manager's cost of such insurance.

7.6 **Subcontractor's Insurance.** Manager shall require that all subcontractors working on the Project maintain, at the subcontractor's expense, workers' compensation insurance, in such amounts as may be required by law from time to time. Manager shall be notified promptly in the event Owner waives any of the Requirements in this Section 5.5.

7.7 **Indemnification of Owner.** Manager shall at all times keep its employees and contractors insured for statutory workers' compensation and other employee benefits required by all applicable laws; and Manager shall maintain employer's liability insurance for an amount not less than \$1,000,000 covering claims and suits by or on behalf of employees and others not otherwise covered by statutory workers' compensation insurance. Owner and its members shall be protected in all such insurance by specific inclusion of Owner under an additional insured or alternate employer rider. Manager shall provide Owner with certificates of insurance evidencing that workers' compensation and employer's liability insurance are in force, and providing not less than thirty (30) days' notice to Owner prior to cancellation. Manager will cooperate with Owner and, upon reasonable request, will attend hearings and trials and assist in effecting settlements, securing and giving evidence, and obtaining the attendance of witnesses in the conduct of suits. Manager will not voluntarily settle any suit, make any payment, assume any obligation, or incur any expense regarding said action without the express written consent of Owner.

7.8 **Indemnification of Manager.** To the extent permitted by law, Owner agrees to defend, indemnify and save harmless Manager from all claims and suits in connection with the Project, provided that such claims and suits are attributable to bodily injury, sickness, disease or death; or to injury to, or destruction of, tangible property; and such claims and suits arise, or are alleged to arise, in whole or in part, out of any negligent act or omission of Owner, its officers, employees or agents. Owner agrees to include Manager as an additional insured in Owner's public liability policy with respect to the Project, but only while Manager is acting as real estate manager for Owner under this Agreement. Owner shall provide Manager and Investor with a certificate of insurance evidencing such liability insurance, and providing not less than ten (10) days' notice to Manager and Investor prior to cancellation.

7.9 **Survival of Indemnity Obligations.** The indemnity obligations contained in this Agreement shall survive the termination of this Agreement.

7.10 **Limitation of Liability.** Manager agrees that it will not seek recourse against the individual partners, shareholders, directors, officers, employees or agents of Owner or any personal assets for satisfaction of any liability with respect to this Agreement.

7.11 **Increased Risk.** Manager shall give Owner written notice if any facts of which Manager is aware as to a material increase in the risk of casualty loss or a claim of liability in connection with the Project or its operation. Such notice shall be given within five business days of when Manager has knowledge of such facts. The obligation shall be limited to issues on the Project and shall not include occurrences within the surrounding neighborhood.

ARTICLE 8 **OWNER'S RIGHT TO AUDIT**

8.1 **Owner's Right to Audit.** Owner and the Authority reserve the right to conduct, or to appoint others to conduct, examinations, at Owner's expense, without notification, of the books and records maintained for Owner by Manager, and to perform any and all additional audit tests relating to Manager's activities hereunder.

8.2 **Correction of Discrepancies.** Should Owner's or the Authority's employees or appointees discover either weaknesses in internal control or errors in record keeping, Manager shall correct such discrepancies either upon discovery or within a reasonable period of time. Manager shall inform Owner in writing of the action taken to correct such audit discrepancies. Owner shall have the right, within ten (10) days written notice to Manager, to audit all files and accounts pertaining to the Building at Manager's principal office during normal business hours. If such audit reveals a material discrepancy (defined as a discrepancy of more than 2% of each budgeted income and expense line item, as reflected in the annual budget approved by Owner), Manager shall be responsible for promptly correcting such discrepancy within ten (10) days after receipt of notice of same.

ARTICLE 9 **REMITTANCE OF FUNDS**

9.1 **Deposit of Funds.** Manager shall deposit immediately upon receipt all security deposits in a separate account designated as such by the Manager for Owner (the "Security Deposit Account"); and in accordance with Section 5.3 herein, shall deposit all rents and other funds collected from the operation of the Project, including any and all advance funds, in a bank approved by Owner, in Owner's accounts for the Project, in the name of the Owner ("Operating Accounts").

9.2 **Security Deposits.** Manager shall maintain detailed records of all security deposits and such records shall be open for inspection by Owner's employees or appointees. Manager shall return a tenant's security deposit to such tenant only in accordance with the lease.

ARTICLE 10 **NONDISCRIMINATION**

10.1 **Nondiscrimination.** In the performance of its obligations under this Agreement, the Manager will comply with, and will use reasonable efforts to ensure that all subcontractors comply with, the provisions of

any Federal, state or local law prohibiting discrimination on the grounds of race, color, sex, sexual orientation, creed, handicap/disability, age or national origin, including: Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241) and all requirements imposed by or pursuant to the Regulations of HUD (24 CFR, Subtitle A, Part 1,) issued pursuant to that Title; regulations issued pursuant to Executive Order 11063; the Fair Housing Act, Title VIII of the 1968 Civil Rights Act, Section 504 of the Rehabilitation Act of 1973 (as amended), the Age Discrimination Act of 1975 and all regulations and administrative instructions implementing these laws.

ARTICLE 11 **COMPENSATION**

11.1 **Compensation.** The Manager will be compensated for its services under this Agreement by monthly fees, to be paid out of the appropriate Operating Account and treated as Project expenses. Such fees will be payable on the first day of each month of this Agreement. The management fee for the Tax Credit Units (i.e. all units) shall be paid by the Owner to the Manager in an amount of up to _____ (i.e., assuming that all such units are LIHTC units with tenants paying the maximum rent allowable under the tax credit program of 30% of 60% of AMGI for the applicable unit size) per occupied unit (such fee to be prorated for any unit which is occupied for a partial month). In no event will the management fee per unit exceed the maximum management fee allowed under the HUD Safe Harbors.

Any increase in the fees set forth above will require the prior written consent (to the extent required under applicable law, the Regulatory Agreement or any Mortgage) of the Authority, and any current lender of funds to the Owner.

ARTICLE 12 **COOPERATION**

12.1 **Cooperation.** If any claims, demands, suits or other legal proceedings which arise out of any of the matters relating to this Agreement be made or instituted by any person against either Owner or Manager, Owner or Manager shall give to each other all pertinent information and reasonable assistance in the defense or other disposition thereof, at its sole expense.

ARTICLE 13 **CONSENT**

13.1 **Consent.** Whenever in this Agreement the consent or approval of Owner or Manager is required, such consent or approval shall not be unreasonably withheld or delayed. Such consent shall be in writing, and shall be duly executed by an authorized officer or agent for the party granting such consent or approval; however, notwithstanding anything in this Agreement to the contrary, if such consent or approval would be required for Manager to comply with the Requirements, Manager shall not be responsible for a failure to comply with the Requirements as a result of Owner's refusal or unreasonable delay to so consent or approve.

ARTICLE 14
NOTICES

14.1 **Notices.** All notices, demands, consents and reports provided for in this Agreement shall be given in writing and shall be deemed received by the addressee on the third day after mailing if mailed by United States Postal Service certified or registered mail, postage prepaid, or on the day delivered if personally delivered at the following addresses:

If to Owner: Collingwood Green Phase I, L.P.
435 Nebraska Avenue
Toledo, OH 43697
Attn: Executive Director

with copy to: Lucas Metropolitan Housing Authority
435 Nebraska Avenue
Toledo, OH 43697
Attn: Executive Director

If to Manager: [To be provided]

The above addressees may be changed by the appropriate party giving written notice of such change to the other parties.

ARTICLE 15
MISCELLANEOUS

15.1 **Assignment.** Manager shall not assign its rights under this Agreement without the prior written consent of Owner; and any purported assignment without Owner's prior written consent shall be of no effect.

15.2 **Special Power of Attorney.** Owner authorizes Manager, as attorney-in-fact for Owner, to enter into and execute leases and rental agreements with respect to the Project on forms approved by Owner; to collect rents and other funds due Owner in Manager's name on Owner's behalf; and to establish and make deposits into and withdrawals from the Security Deposit Account and the Operating Accounts in accordance with the terms of this Agreement.

15.3 **Amendments.** This Agreement constitutes the entire agreement between Owner and Manager; and no amendment, alteration, modification or addition to this Agreement shall be valid or enforceable, unless expressed in writing and signed by the party or parties to be bound thereby.

15.4 **Headings.** All headings herein are inserted only for convenience and ease of reference, and are not to be considered in the construction or interpretation of any provisions of this Agreement.

15.5 **Waiver.** The waiver of any of the terms and conditions of this Agreement on any occasion or occasions shall not be deemed as waiver of such terms and conditions on any future occasion.

15.6 **Illegality.** If any provision of this Agreement shall prove to be illegal, invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

15.7 **Relationship**. Nothing contained in this Agreement shall be construed to create a relationship of employer and employee between Owner and Manager; it being the intent of the parties hereto that the relationship created hereby is that of an independent contractor. Nothing contained herein shall be deemed to constitute Owner and Manager as partners or joint venturers.

15.8 **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of Owner, its successors and permitted assigns; and shall be binding upon and inure to the benefit of Manager, its successors and permitted assigns.

15.9 **Governing Law**. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio.

15.10 **Enforceability**. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof. Owner's remedies under this Agreement are cumulative, and the exercise of one remedy shall not be deemed an election of remedies, nor foreclose the exercise of Owner's other remedies. No waiver by Owner of any breach of this Agreement shall be deemed to be a waiver of any other or subsequent breach.

15.11 **Execution of Counterparts**. For the convenience of the parties, this Agreement may be executed in multiple counterparts, each of which shall constitute a complete original of this Agreement, and may be introduced in evidence or used for any other purpose without the production of any other counterparts.

15.12 **Successors and Assigns**. This Agreement shall inure to the benefit of, and constitute a binding obligation upon, Owner and Manager and their respective successors and assigns; provided, however, that Manager shall not assign this Agreement, or any of its duties hereunder, without the prior written consent of Owner. In the event Owner's current managing member, or any successor managing member of Owner, is removed as managing member in accordance with the Operating Agreement, any successor managing member selected in accordance with such Operating Agreement shall have authority to act hereunder on behalf of Owner.

15.13 **Conflict**. In the event of any conflict between this agreement and all Applicable Public Housing Requirements, then all Applicable Public Housing Requirements will prevail.

15.14 **Confidentiality**. All information and data to which the Manager may have access under this Agreement and information and data that are received by the Manager from the Owner shall be treated in confidence. Such information and data shall be used only for purposes in performing the work.

In witness whereof, the parties hereto have caused their duly authorized representatives to execute this Agreement as of the date first set forth below.

[signature page follows]

MANAGER:

[NAME, an Ohio corporation]

By: _____

Name:

Title:

OWNER:

COLLINGWOOD GREEN PHASE I, L.P., an Ohio limited partnership

By: Collingwood Development I, Inc., an Ohio corporation, its General Partner

By: _____

Name: _____

Title: _____

COST CONTROLS AND SAFE HARBOR STANDARDS

Cost Control and Safe Harbor Standards for Rental Mixed-Finance Development

Revised: April 9, 2003

In order to expedite the mixed-finance review process and control costs, HUD is instituting safe harbor and maximum fee ranges for a number of costs. In addition, HUD has provided guidance on several development issues. Unless otherwise noted, the cost controls and safe harbors apply to those phases for which a mixed-finance proposal is submitted after January 1, 2000. Any terms previously approved by HUD through approval of a pre-development agreement, development agreement, or program manager contract will not be reviewed again. This guidance is specific to rental developments, and does not apply to homeownership phases.

These policies were developed in consultation with housing authorities, HUD staff, and industry representatives, over the course of more than a year. Once drafted, they were circulated for public review, and the final cost controls included here reflect the many valuable comments received. HUD will continue to review the policies, based on experiences reported by housing authorities and other program participants, and may make alterations to the standards in the future.

Changes from the revised Cost Control and Safe Harbor Standards (January 2, 2002) are italicized in this alert and include the following:

- HOPE VI or other public housing funds may be used, on a case-by-case basis, to pay for up to 15% of the total developer fee/overhead amount to the developer prior to closing. A loan is not required.
- Operating subsidy and tenant rents used to fund a reserve must be used for eligible operating subsidy expenses.
- The property management fee for the public housing units may be calculated as 6% of imputed tax credit rents.

HUD's cost controls and safe harbors are contained in the following chart. The chart provides a brief definition of each term, lists the safe harbor and maximum allowable fees, and briefly describes the risk factors or circumstances that may result in a fee above the safe harbor standards. These guidelines should be used by housing authorities, developers, and consultants when negotiating terms and drafting documents for HUD review.

HUD will review the project terms when receiving Predevelopment and Development Agreements, Program Manager contracts, mixed-finance proposals, and/or other documents that contain negotiated terms. If a project is at or below a safe harbor standard, no further review will be required by HUD. If a project is above a safe harbor standard, additional review by HUD will be necessary. In order to approve terms above the safe harbor, the housing authority must demonstrate to HUD in writing that the negotiated terms are appropriate for the level of risk involved in the project, the scope of work, any specific circumstances of the development, and the local or national market for the services provided.

Cost Control and Safe Harbor Standards

Item	Defining Criteria	Safe Harbor	Maximum
<p>Net Developer Fee for Rental Mixed-Finance Developments</p> <p>(Developer Fee and Overhead)</p>	<p>The safe harbor and maximum standards apply to the net developer fee, i.e., the portion of the developer fee received by the developer to cover overhead and profit.*</p> <p>Net developer fee is expressed as a percentage of the project costs. Project costs are defined as all hard and soft costs of constructing a particular component with the exclusion of the following:</p> <ul style="list-style-type: none"> • Third-party costs paid by the PHA under contracts entered into directly by PHA and third parties, which will not be reimbursed to PHA at a mixed-finance closing (e.g., where the PHA contracts separately for demolition services); • The developer fee itself; • All costs related to family self-sufficiency and resident relocation activities; and, • All reserve accounts regardless of how characterized, including start-up reserves, operating deficit reserves, capital improvement reserves, initial operating period reserve, etc. <p>Payments to developers such as “deferred developer fee” are considered part of the fee/overhead amount.</p> <p>Developers may receive up to a 1% additional fee (with a cap of 12% developer fee) if cost savings are realized. This 1% incentive fee must be paid from non-public housing funds.</p>	<p>9% or less of the project costs (profit and overhead); projects that do not have both LIHTC and public housing financing should have fees well below 9%.</p>	<p>12% of the project costs (profit and overhead).</p> <p>Fees above 12% will be considered only if allowed by the State Housing Finance Agency and with significant justification from the PHA and developer demonstrating the increased risk.</p>

* The safe harbor and maximum guidelines assume the net developer fee excludes any portion of the fee received by the developer or co-developer (including a PHA) that is returned to the project to fund operating reserves or to cover project costs.

Cost Control and Safe Harbor Standards

Item	Defining Criteria	Safe Harbor	Maximum
	<p>Developers with fees above the safe harbor standard should meet most or all of the following risk factors:</p> <ul style="list-style-type: none"> • Developer guarantees are for large dollar amounts in proportion to project size and/or long terms; • Developer independently obtains financing, including tax credits (fee increases with both amount of financing and number of sources); • Developer obtains site control from an entity other than a PHA or PHA affiliate (fee increases with number of sites); • Project is small (i.e., 50 units or less); • Project is complex (e.g., in financial, legal, environmental, and/or political terms); • Project contains units without operating subsidy (i.e., market-rate or LIHTC-only units); • Developer bears more than 25% of the predevelopment costs (until reimbursement at closing); and/or • The Developer Fee is deferred (paid out of positive cash flow from market-rate units). <p>All criteria apply to both for-profit and non-profit developers.</p> <p>PHAs or PHA affiliates that act as developer can only receive fees if they are first returned to the project and, to the extent that funds are remaining, subsequently classified as program income and used for low-income housing purposes.</p>		

Cost Control and Safe Harbor Standards

Item	Defining Criteria	Safe Harbor	Maximum
<p>Pay-Out Schedule for Developer Fee/Overhead</p>	<p>Public housing funds may not be used for payment of developer fee/overhead. HUD recommends the following limit on the pay-out schedule, to the extent that non-public housing funds are available, by phase:</p> <ul style="list-style-type: none"> • Closing: Not to exceed 50% of the fee/overhead amount. • Construction Completion: 25% of the fee/overhead amount. • Stabilized Occupancy: 25% of the fee/overhead amount. <p>A portion of the fee can be further deferred.</p> <p><i>On a case-by-case basis, HUD will consider advancing the developer funds where there is an extended predevelopment period caused by such external factors as environmental remediation, consent orders, etc. If HUD determines such an advance is warranted, HUD will advance up to 15% of the total developer fee/overhead amount to the developer prior to closing using HOPE VI or other public housing funds.</i></p>	<p>Within recommended pay-out schedule.</p>	<p>Payments of greater than 50% at closing or less than 25% at stabilized occupancy will be closely scrutinized.</p>
<p>Contractor Fee</p>	<ul style="list-style-type: none"> • Percentages are based on hard construction cost. • General Conditions includes the bond premium. 	<p>Overhead: 2% Profit: 6% General Conditions: 6%</p>	<p>14% is the maximum for these combined costs provided that the PHA justifies why the 2/6/6 percentages for the individual costs cannot be met.</p>

Cost Control and Safe Harbor Standards

Item	Defining Criteria	Safe Harbor	Maximum
PHA Administrative/ Consultant Costs	<ul style="list-style-type: none"> • Costs should reflect only actual documented expenditure of time and overhead cost (supplies, equipment, telephone, etc.) • Such costs include both in-house staff time and outside consultants (program manager, development advisors, relocation specialists, etc.), but exclude outside legal and community and supportive services costs. On the HUD budgets, these costs may be captured under multiple BLIs. • This cap applies to HOPE VI grantees awarded funds in 1998 or later, as well as to any non-HOPE VI mixed-finance projects with proposals submitted after January 1, 2000; HUD will evaluate earlier grants on a case-by-case basis. HUD will continue to evaluate whether this cap provides helpful guidance and controls costs without hampering the PHA's ability to implement the grant. 	3% of the total project budget (basis includes all hard and soft development costs excluding CSS expenses).	6% of the total project budget
Sharing of Third-party Pre-development Costs	<p>HUD recommends the following cost-sharing schedule:</p> <ul style="list-style-type: none"> • PHA and Developer split third-party costs 75/25. • Developer's share of third-party costs (25%) will be reimbursed at closing out of available sources. <p>Costs to be shared are all third-party costs under the developer's scope of work (e.g., A/E, market study, financing fees, etc.) incurred during the predevelopment period. Public housing funds may not be used to reimburse developer legal counsel prior to closing, and developer legal costs do not contribute to the developer's share of third-party costs.</p> <p>Exceptions to the schedule may be made for small, local, non-profit, and/or minority/disadvantaged firms on a case-by-case basis.</p>	Costs are shared up to 75% by the PHA and at least 25% by the Developer.	N/A
Equity Raise and Pay-In Schedule	HUD will not adopt a safe harbor equity raise or standard pay-in schedule, as these are highly competitive, market-driven numbers.	Current market standard.	N/A

Cost Control and Safe Harbor Standards

Item	Defining Criteria	Safe Harbor	Maximum
Identity of Interest Parties	<ul style="list-style-type: none"> • Identity of interest parties are those that share an ownership interest. Identity of interest relationships are most common between a developer/owner and construction management, general contractor (GC), private management firm, and/or investor. • PHAs are required to ensure cost competitiveness to the extent possible. • Where a developer and GC have an identity of interest, the PHA needs to show the GC was the lowest bidder in response to a public request for bids or request a waiver from HUD under 24 C.F.R. 941.606(n)(1)(ii)(B). • While the use of related or preferred entities as investors is permitted, HUD encourages PHAs to have their procured developer “shop around” to ensure they are getting a competitive yield. 	N/A	N/A

Cost Control and Safe Harbor Standards

Item	Defining Criteria	Safe Harbor	Maximum
Property Management Fees	<ul style="list-style-type: none"> • Can be defined on a percentage of gross income or per-unit per month (PUM) basis. • If using the PUM basis for fee, fees should drop for vacant units. • PHAs and PHA Affiliates cannot earn a fee for property management of public housing units, but can cover their associated administrative expenses. • Fees may increase with higher-risk projects. • Different types of risk are associated both with mixed-income and solely public housing projects. 	<p>a) 6% effective gross income or,</p> <p>b) a flat PUM fee for occupied units that is supported by the local project-based Section 8 program in the area (use Field Office guidelines) or,</p> <p><i>c) 6% of imputed tax credit rent for the public housing units (assume public housing units are tax credit units, charge up to maximum tax credit rent, and take 6% of that amount).</i></p>	Proposals above the safe harbor will be closely scrutinized; higher fees will require significant justification and market support.
Price for Program Management Services	<ul style="list-style-type: none"> • Typically a fixed-price contract. • Contracts must be performance-based with payments fixed to milestones (or monthly if tied to milestones). • Size of fee should be related to the specific scope and role PM is expected to play. • Costs for program management (either a full team or independently procured consultants) must be included in the PHA's Administrative Cost Cap. • PHAs must comply with the provision of the procurement regulations that requires a PHA to prepare a cost estimate for procured services prior to receipt of bids. 	N/A; the fee must be contained within the PHA's overall Administrative Cost Cap. Use checklist of responsibilities and clearly defined scope to limit costs.	N/A

Cost Control and Safe Harbor Standards

Item	Defining Criteria	Safe Harbor	Maximum
Legal Fees	<ul style="list-style-type: none"> • Largely independent of the size of the phase. • Attorneys should be used for legal functions. • Legal fees should be tied to a scope of work, which should be monitored. HUD will review PHA legal costs when reviewing HOPE VI development budgets. • In order to reduce costs and provide an incentive to reach closing, public housing funds may not be used to pay developer legal costs prior to closing. • HUD intends to produce further guidance on how PHAs should utilize their attorneys. • The procurement regulations state that for any RFP, the PHA must undertake a cost or price analysis prior to receipt of proposals. 	No express limit; public housing funds may not be used to reimburse developer legal counsel prior to closing. All legal costs will be reviewed by HUD.	N/A
Operating Deficit Reserve and Operating Subsidy Reserve	<ul style="list-style-type: none"> • HUD is not establishing maximum or minimum levels of reserves to be maintained, as appropriate reserve levels depend upon the specific project and investor requirements. • Both reserves must be established with non-public housing funds, but may be replenished with public housing funds (i.e., operating subsidy or tenant rents from PHA-assisted units). • <i>If public housing funds are contributed to a reserve at any time, those funds in the reserve must be dedicated to the project or returned to the PHA to be used for eligible purposes.</i> • <i>The portion of the reserve funded with public housing funds may not be used to pay for partnership exit taxes, debt repayment, or any other expense that is not an eligible use of public housing funds.</i> 	N/A	N/A